



Seattle's Affordable Housing "Linkage Fee": A Renewed Attempt to Impose Mandatory Affordable Housing Requirements

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The City of Seattle has struggled for decades with the issue of how to provide sufficient affordable housing. In the 1980s and 1990s, Seattle attempted to discourage the demolition and conversion of existing low-income housing by adopting "Housing Preservation" ordinances that imposed fees or required developers to provide replacement housing. Washington courts rejected these mandatory requirements, ruling they were unauthorized taxes or unconstitutional conditions that placed an unfair burden on individual landowners to solve a "community" problem.

After Seattle's failed experiment with mandatory affordable housing requirements, the City shifted its focus to voluntary programs. These programs include various [land use incentive zoning provisions](#), first adopted in 2001, that allow additional floor area to developers who provide low-income housing or contribute cash to the City's low-income housing program, as well as the City's [Multi-Family Property Tax Exemption](#) (MFTE), adopted in 2004.

In 2014, the City Council shifted its focus back to mandatory requirements, adopting a [resolution](#) directing City staff to develop legislation to implement a "[linkage fee](#)" program for affordable housing.

The program would collect fees from developers of commercial projects or new market-rate multi-family residential projects in certain zones to mitigate impacts of those projects on affordable housing in the City. The proposed fees will range from \$5-to-\$22 per square foot of rentable area in the building, depending on the project type and location. Developers will have a choice to either pay a proportionate fee or provide a proportionate number of affordable housing units in the new building.

The Council intends to implement the program in late 2015. Policy changes that would lay the policy groundwork for the program were included in a package of proposed amendments to the City's Comprehensive Plan. On February 5, 2015, the City issued a Determination of Nonsignificance (DNS) for the proposed Comprehensive Plan amendments under the State Environmental Policy Act (SEPA).

The proposed linkage fee has been met with significant opposition from the development community, which organized a "Coalition for Sustainable Jobs and Housing" that has lobbied against the fee. The Coalition argues that the fee is both ineffective (because it will stifle housing production and make housing more expensive) and illegal (for largely the same reasons courts found the Housing Preservation ordinances illegal). The Coalition also filed an appeal with the Seattle Hearing Examiner challenging the DNS for the proposed Comprehensive Plan amendments, which would have allowed the amendments to go forward without the need to prepare a full Environmental Impact Statement (EIS). Apparently in response to the Coalition's appeal, the City recently [withdrew](#) the DNS on April 6, 2015, "to allow reconsideration of the elements of the proposal."

The City has not indicated whether or how it intends to proceed with the linkage fee program following its decision to withdraw the DNS. The Mayor's blue-ribbon panel on housing affordability, which is set to issue a package of recommendations to the Mayor by the end of June, [has not yet decided](#) whether to recommend adoption of the linkage fee program. Nevertheless, the Coalition has continued with its efforts to oppose the program. On April 13, 2015, the Coalition released a report that it claims "substantiates that our proposed solutions can attain the goal of 50,000 units put forth by Mayor

Murray” and “details ways that Seattle can build and preserve 20,000 affordable units without jeopardizing the production of the 30,000 market rate units.” In particular, the report suggests the following actions, among others:

- Creation of a MFTE program for existing housing
- Extension of the MFTE program for expiring units
- Use of city-owned land for affordable housing
- Expansion of the MFTE program to areas where all multifamily housing is built
- Refinements to the incentive zoning program that provide more flexibility and better price discrimination

If the City does adopt the linkage fee program, it will very likely be challenged in court. A key element of the City’s defense of the program will be its “[Seattle Affordable Housing Nexus Study](#),” which attempts to demonstrate a legally-sufficient “nexus” between the need for affordable housing and the impacts of the new development that would be subject to the fee. Thus, the fate of the linkage fee program may ultimately hinge on whether a court agrees with the reasoning and data in the City’s Nexus Study.

For more information

If you are interested in learning more about the proposed linkage fee program, please contact [Duncan Greene](#) at dmg@vnf.com, or [Brent Carson](#) at brc@vnf.com.

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